

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

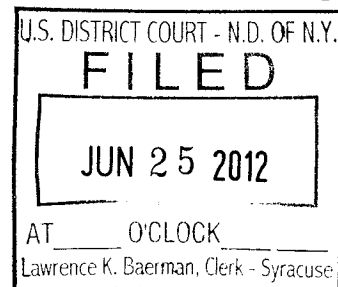
PAUL MANCUSO  
PLAINTIFF

VS.

U.S. Environmental  
Protection Agency  
DEFENDANTS

COMPLAINT  
CIVIL ACTION NO.

5:12-CV-1027  
LEK/ATB



I. Nature of Action

1. This is an action under the Freedom of Information Act, Title 5, United States Code Section 552 and the administrative Procedures Act, Title 5 United States Code Section 701 et. seq., for injunctive and other appropriate relief, and seeking the release of agency records requested by plaintiff from defendant United States Environmental Protection Agency.

II. Jurisdiction and Venue

2. This court has jurisdiction over this action pursuant to Title 5, United States Code Section 552 (a) (4) (B).

3. This court also has jurisdiction over this action pursuant to Title 28, United States Code Section 1331 and Title 5, United States Code Section 701 et. seq.

4. Venue lies in this district under Title 5 United States Code Section 552 (a) (4) (B).

III. Plaintiff

5. Plaintiff, Paul Mancuso, is a citizen of the United States of America and the subject of the records requested of the defendant.

#### IV. Defendants

6. Defendant, Environmental Protection Agency of the United States (EPA), is an agency within the meaning of Title 5, United States Code Section 552 (f).

7. Defendant, Lisa Jackson is the Administrator of the EPA. This defendant is responsible for EPA compliance with the laws of the United States and regulations promulgated under such laws, including the laws and regulations at issue in this case.

#### V. Handwriting Exemplars submitted to EPA

8. In the year 2006 in Syracuse, New York the plaintiff in good faith submitted handwriting exemplars to the EPA Agents for analysis. Representatives of the defendant (see "Declaration of Special Agent Derx") claim that no analysis has been performed. Plaintiff challenges this claim

#### VI. Plaintiff's FOIA Request

9. By means of a letter to defendant EPA dated January 7, 2012, plaintiff requested under the FOIA a copy of all handwriting exemplars that were submitted by him to EPA Agents in Syracuse, New York in 2006.

10. By means of a letter to plaintiff Paul Mancuso date stamped March 1, 2012 the defendant EPA (RE: Response to Freedom of Information Request: HQ 00603-12) determined plaintiff's request to be exempt from mandatory disclosure under Title 5, United States Code Section 552 (b) (7) (E).

11. By means of a letter to defendant EPA National Freedom of Information Officer dated March 20, 2012, the plaintiff filed a timely appeal to the FOIA request denial.

a) In this timely appeal, the plaintiff noted that it has been alleged as fact in this District Court that the handwriting exemplars that are the subject of this FOIA request were never submitted for analysis, therefore the plaintiff is merely requesting his own handwriting.

3.

12. By means of a letter to the plaintiff dated MAY 30, 2012, the defendant EPA (RE: Freedom of Information Act Appeals HQ-FOI-00603-120A(HQ-APP-00092-12) and HQ-FOI-00962-12(HQ-APP-00110-12)) determined that the appeal should be, and was denied. It was determined "the withheld material contains no reasonable segregable information that may be released". The defendant, by virtue of Exemption 7(E) of the FOIA, has withheld the plaintiff's own handwriting.

#### VII. Exhaustion of Legal Remedies

13. Plaintiff has exhausted all applicable administrative remedies.

14. Plaintiff is entitled to the timely production of the documents that are the subject of this FOIA request.

15. Defendants have wrongfully withheld the requested records from Plaintiff.

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#### VIII. Legal Claims

16. Plaintiff repeats and realleges paragraphs 1- 15.

17. Defendants's application of exemption 7 (E) of the FOIA, Title 5 United States Code Section 552 (b) (7) (E), is arbitrary, capricious, an abuse of discretion and not in accordance with law, all in violation of the Freedom of Information Act.

a) "Delineating the scope of exemption 7 (E) in Conference Report No. 93-1200. 93rd Congress 2d. Sess., reprinted in 174 U.S. Code Cong. and Adm. News 6285, 6291; the Conference Committee States- The Conferences wish to make clear that the scope of this exemption against disclosure of investigative techniques and procedures should not be interpreted to include routine techniques and procedures already well known to the public, such as ballistic tests, fingerprinting and other scientific tests or commonly known techniques." Ferguson v. Kelley, 448 F. Supp. 919 (ND ILL. 1978) Handwriting analysis is well known to the public.

4.

b) The information requested by the plaintiff, given the application of exemption 7 (E) by the defendant, raises questions about the integrity of an EPA investigation. It was claimed in this District Court by an Agent of the EPA and two Attorneys for the United States that the handwriting exemplars submitted by the plaintiff were never analyzed. Public confidence is a concern as the government attorneys may have been less than fully candid with respect to the investigation of the plaintiff.

18. The plaintiff has no plain, adequate, or complete remedy at law to redress the wrongs described herein.

IX. Prayer for Relief

~~WHEREFORE, the plaintiff respectfully requests that this COURT:~~

19. Order defendants immediately to disclose the requested records in their entireties and make copies available to the plaintiff.

20. Order Defendants to produce requested handwriting for in-camera inspection to determine if tests were performed on the samples.

21. Award Plaintiff its costs and reasonable attorney's fees incurred in this action; and

22. Grant plaintiff all other relief that is just and proper.

DATED: 6-21-12

RESPECTFULLY SUBMITTED,

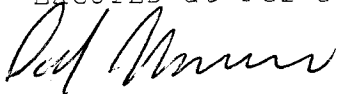
Paul Mancuso, FCI Schuylkill, P.O. Box 670, Minersville PA.

VERIFICATION

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED at FCI Schuylkill, Minersville PA on

6/21/12



~~Paul Mancuso, Plaintiff~~



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR - 1 2012

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mr. Paul Mancuso  
2310 Portal Road  
Utica, New York 13501

RE: Response to Freedom of Information Request: HQ-FOI-00603-12

Dear Mr. Mancuso:

This letter is in response to your Freedom of Information Act request dated January 7, 2012, that was referred to this office on January 24, 2012, for a copy of all of your handwriting exemplars which were given to the U.S. Environmental Protection Agency's agents in 2006 in Syracuse, New York.

The Office of Criminal Enforcement, Forensics and Training has conducted a records search and is unable to provide you with the documents responsive to your request because they have been determined to be exempt from mandatory disclosure under 5 U.S. C. Section 552 (b)(7)(E), which affords protection to all law enforcement information that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

If you are not satisfied with my action on this request, you may submit a written appeal to the National Freedom of Information Officer, FOIA and Privacy Branch (2822T), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460 (U.S. Postal Service Only), or by fax: (202) 566-2147, or by e-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, NW, Room 6416J, Washington, DC 20004.

Your appeal must be in writing, and submitted no later than 30 calendar days from the date of this letter. The agency will not consider appeals received after the 30 calendar day limit. The appeal letter should clearly identify the determination being appealed including the assigned FOIA request number shown above. For quickest possible handling, both the appeal letter and its envelope should be clearly marked "Freedom of Information Act Appeal."

March 20, 2012  
National Freedom Of Information Officer  
FOIA & Privacy Branch (2822T)  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington DC 20460

RE:Freedom of Information Act Appeal - FOIA HQ-FOI-00603-12

To the National Freedom of Information Officer:

This letter shall serve as my appeal to the decision to withhold the handwriting exemplars, provided by me to the Environmental Protection Agency, that were requested in the above referenced action. This denial of requested materials, pursuant to 5 USC section 522(b)(7)(E), is contrary to the statute for the following reasons:

(1) Delineating the scope of this exemption 522 (b)(7)(E) in conference report No. 93-1200, 93rd Congress 2d. Sess, reprinted in 174 U.S. Code Cong. and Adm. News 6285, 6291; the Conference Committee states - ~~The conferees wish to make clear that the~~ scope of this exception against disclosure of "investigative techniques and procedures" SHOULD NOT BE INTERPRETED TO INCLUDE routine techniques and procedures already well to the public, such as ballistic tests, fingerprinting, and other scientific tests or COMMONLY KNOWN TECHNIQUES (cited in Furguson v Kelley 448 F. Supp. 919, 1978 [NDI 11]). Clearly handwriting exemplars are requested for the commonly known technique of handwriting analysis, therefore the withholding of the requested documents is an abuse of discretion.

(2) It has been alleged numerous times on judicial record by AUSA Craig Benedict and Attorney Todd Gleason of the EPA that the handwriting exemplars were never submitted for analysis. THEREFORE:

a) There is no information that would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions. Only the requestors handwriting as per the exemplars. OR

b) The government attorneys have been less than fully candid with respect to their investigation of the requestor. If this is the case then the information sought involves questions about the integrity of the government. Public confidence becomes a concern as the allegations made by the government attorneys were made in open court.

IN conclusion, the law requires release of the requested documents. The decision to withhold is an abuse of discretion and will not withstand judicial review. Please provide relief and reverse this arbitrary denial of access.

Respectfully Submitted,

Paul Mancuso



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

May 30, 2012

OFFICE OF  
GENERAL COUNSEL

Mr. Paul Mancuso  
2310 Portal Road  
Utica, NY 13501

Re: Freedom of Information Act Appeals HQ-FOI-00603-12-A (HQ-APP-00092-12)  
and HQ-FOI-00962-12 (HQ-APP-00110-12)

Dear Mr. Mancuso:

I am responding to your December 1, 2011 and May 9, 2011, Freedom of Information Act ("FOIA") appeals. You appealed the March 1, 2012 and April 18, 2012, decisions of Matthew W. Morrison, Deputy Director, Office of Criminal Enforcement, Forensics & Training, Office of Enforcement and Compliance Assurance of the U. S. Environmental Protection Agency ("EPA" or "Agency"), to deny the requests you submitted to EPA on January 7, 2012 and March 8, 2012. Your requests sought copies of all of your handwriting exemplars which were given to the U.S. Environmental Protection Agency's agents in 2006 in Syracuse, New York. The decisions stated that your requests were denied because the documents were exempt from disclosure under Exemption 7(E) of the FOIA, 5 U.S.C. § 552(b)(7)(E).

I have carefully considered your requests, EPA's decisions, and your appeals. For the reasons set forth below, I have determined that your appeals should be, and are, denied.

You argue on appeal that EPA has improperly withheld the hand writing exemplars provided to EPA in 2006. In his decisions Mr. Morrison stated that the hand writing exemplars have been determined to be exempt from mandatory disclosure by virtue of Exemption 7(E) of the FOIA.

Exemption 7(E) of the FOIA, 5 U.S.C. § 552(b)(7)(E), exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." The withheld documents are records compiled for law enforcement purposes. The documents were compiled by EPA for the purpose of enforcing one or more environmental statutes or regulations. The production of this information would disclose a technique or procedure used in law enforcement investigations that is not well known to the public, and, thus, would nullify its effectiveness. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 7(E) of the FOIA.



Paul Mancuso  
FOIA Appeal No. HQ-FOI-00603-12-A; (HQ-APP-00092-12)  
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I have determined that the withheld material contains no reasonably segregable information that may be released.

This letter constitutes EPA's final determination on your appeals. In accordance with 5 U.S.C. § 552(a)(4)(B), you have the right to seek judicial review of this determination by instituting an action in the district court of the United States in the district in which you reside, or have your principal place of business, or in which the Agency records are situated, or in the District of Columbia. As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) within the National Archives and Records Administration was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; e-mail, [ogis@nara.gov](mailto:ogis@nara.gov); telephone, 301-837-1996 or 1-877-684-6448; and facsimile, 1-301-837-0348.

Should you have any questions concerning this matter, please call Thressa M. DeGrandchamp, at (202) 564-5679.

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Sincerely,



Kevin Miller  
Assistant General Counsel  
General Law Office

cc: Matthew W. Morrison, OECA  
Tom Seaton, OECA  
Laurice Redhead, OECA



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

DECLARATION OF JUSTUS DERX

v.

08-CR-611 (FJS)

PAUL MANCUSO, LESTER MANCUSO,  
and STEVEN MANCUSO,

Defendants.

I, Justus Derx, declare as follows:

1. I am over 18 years of age, and I make this declaration pursuant to 28 U.S.C.

§ 1746. I declare that the following statements are true and correct to the best of my knowledge. This declaration is filed in support of the "Government's Consolidated Response to Defendants' Post-Trial Motions.

2. I graduated with a Bachelor of Arts from St. Bonaventure University in 1988.

3. I am the Resident Agent in Charge with the Environmental Protection Agency ("EPA") in Syracuse, New York. I have been a Special Agent with EPA for thirteen years. Prior to serving with EPA, I was a Special Agent with the Internal Revenue Service for approximately nine years.

4. Beginning in 2005, my office began investigating Paul, Steven, Lester, and

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Ronald Mancuso in connection with the illegal removal and disposal of regulated asbestos-containing materials ("RACM") as well as various Title 18 offenses associated with those environmental crimes.

5. As part of that investigation, my office accumulated a substantial volume of paperwork associated with the various shell companies that the aforementioned individuals set up as part of their ongoing criminal conspiracy. Likewise, in reviewing that paperwork, we began noticing that certain handwriting appeared to be very similar in size and style, yet would be ascribed to the names of different individuals on the face of the document – i.e., the same handwriting appeared on multiple documents under different signatures.

6. In approximately September 2006, the United States requested that Paul, Steven, and Ronald Mancuso provide handwriting exemplars. They did so at Ed Menkin, Esq.'s office.

Shortly after the exemplars were provided, the United States Attorney's Office for the Northern District of New York sent target letters to Paul, Steven, Lester, and Ronald Mancuso.

8. Thereafter, Ronald Mancuso attended a "proffer session" at the United States Attorney's Office for the Northern District of New York.

9. On August 28, 2008, Ronald Mancuso pled guilty to a one-count conspiracy under 18 U.S.C. § 371, and entered into a "plea and cooperation" agreement.

10. As part of his proffer and subsequent cooperation under his agreement, Ronald Mancuso readily identified the handwriting of Paul Mancuso. He stated that his basis for being able to identify Paul Mancuso's handwriting was that "he was his brother" and he had seen his handwriting "for years."

11. During subsequent phases of the investigation, additional witnesses to include Joseph Mazza, Gregg Starczweski, Mark Yozzo, and Christopher Lambert were able to identify Paul and/or Steven Mancuso's handwriting based on prior familiarity therewith.

12. Based on these various witnesses' ability to identify Paul and/or Steven Mancuso's handwriting, my office and the United States Attorney's Office for the Northern District of New York determined that expert handwriting analysis was unnecessary. Accordingly, the handwriting exemplars provided by Paul, Steven, and Ronald Mancuso were never submitted for analysis.

13. Upon information and belief, files were reviewed at the Syracuse offices of EPA-CID and the United States Attorney's Office, as well as the Washington, D.C. office of the Environmental Crimes Section for any "demand" for the Defendants' handwriting samples. To my knowledge, the Defendants in the above-referenced action never requested that the handwriting samples be provided despite, obviously, knowing that they existed.

I declare under penalty of perjury that the foregoing is true and correct and is based on my personal knowledge.

Dated: January 4, 2010

Justus Derx

Justus Derx